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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of: ) MM DOCKET No.: 96-209  
MORGAN MEDIA, INC. )  
Order to Show Cause Why the )  
License for Station WAUB (AM) )  
in Auburn, New York, Should )  
Not Be Revoked. )

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**DEC 11 1996**

**FEDERAL COMMUNICATIONS COMMISSION  
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Suite 201, Courtroom 4  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Wednesday,  
November 20, 1996

The parties met, pursuant to the notice of the  
Judge, at 9:32 a.m.

BEFORE: HON. RICHARD L. SIPPEL  
Administrative Law Judge

APPEARANCES:

On behalf of Morgan Media, Inc.:

SHELLEY SADOWSKY, ESQ.  
Rosenman & Colin, L.L.P.  
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On Behalf of Mass Media Bureau:

ROBERT A. ZAUNER, ESQ.  
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Complaints and Investigation Branch  
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I N D E XWITNESSES:DIRECTCROSSREDIRECTRECROSSVOIR  
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None

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None

Hearing Began: 9:32 a.m.

Hearing Ended: 9:55 a.m.

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P R O C E E D I N G S

JUDGE SIPPEL: Good morning, Mr. Zauner.

We are on the record at this point to reflect the fact that counsel for the party, and this is in the Auburn, New York, case, has not yet appeared. It is about 9:32 a.m. by the clock in the courtroom. We are going to go in recess for a few minutes to wait for counsel to appear.

Thank you. Off the record.

(Whereupon, a short recess was taken.)

JUDGE SIPPEL: I am going to ask counsel to note their appearances for the record.

On behalf of the Bureau?

MR. ZAUNER: Robert A. Zauner.

JUDGE SIPPEL: And on behalf of the Licensee?

MS. SADOWSKY: Shelley Sadowsky of Rosenman & Colin.

JUDGE SIPPEL: Good morning, Ms. Sadowsky.

MS. SADOWSKY: Good morning, Your Honor.

JUDGE SIPPEL: I have got your joint report, and I have got some questions with respect to what needs to be done and then some -- what I would anticipate would be rescheduling of the dates, the procedural and the hearing dates, that I have set down in my Order.

I have a question for Mr. Zauner. This may be one of your last appearances in hearing at the Commission. Who

1 will try this case?

2 MR. ZAUNER: Your Honor, I have no idea. I  
3 presume they will assign it to someone.

4 JUDGE SIPPEL: All right. Keep that in mind. I  
5 am sure you will, but I want to be sure that you all  
6 understand that I understand that, too.

7 The problem with these silent station cases are  
8 that we have this February 9, 1997, deadline. It is a  
9 guillotine hanging over our heads. I want to get this done  
10 the right way, and I want to get it done quickly.

11 Let me say, first of all, is there any preliminary  
12 statement anybody wants to make about moving this case  
13 along? Because I have definite ideas on what to do.

14 Ms. Sadowsky?

15 MS. SADOWSKY: Your Honor, I had no ideas other  
16 than it was my understanding from the pre-hearing conference  
17 Order that the hearing date of February 25 is firmly set.

18 If that is the case, then my view is that if our  
19 client does not resume operation before February 9, the need  
20 for hearing in this case would be mooted by the fact that  
21 statutorily the license would be lost.

22 JUDGE SIPPEL: That is true. That is true. That  
23 is why I wanted to move the hearing date up in light of what  
24 you represented.

25 That language with respect to there being a firm

1 date was more for purposes of cases where there is not going  
2 to be any further delay. This obviously has this February 9  
3 deadline twist to it.

4 MS. SADOWSKY: Right.

5 JUDGE SIPPEL: That puts it in a different  
6 context. But I am prepared to have this case heard well in  
7 advance of that date as far as my scheduling goes.

8 See, my question is my reaction to the joint  
9 report is one, apparently there is no discovery that is  
10 needed by either side. Am I correct on that?

11 MS. SADOWSKY: That is correct.

12 JUDGE SIPPEL: You do not need any discovery?

13 MS. SADOWSKY: No, I need no discovery.

14 JUDGE SIPPEL: All right. A summary decision, but  
15 yet you say the case is not yet ripe to determine whether or  
16 not summary decision would even be appropriate.

17 MS. SADOWSKY: Your Honor, efforts are being made  
18 as we speak to find a potential buyer for the station who  
19 would take the station back on the air prior to the  
20 statutory deadline. That is the goal. That has been the  
21 goal since the Orders have come out.

22 We understood that the hearing was set for  
23 February 27. We understood that if we can get back on the  
24 air by February 9, and hopefully before then we would have  
25 filed our motion for summary decision with respect to the

1 disposition of the case.

2 JUDGE SIPPEL: All right. That seems to make  
3 sense. It is February 25, not February 27.

4 MS. SADOWSKY: February 25. Excuse me.

5 JUDGE SIPPEL: That is all right. The same  
6 principle applies.

7 So the idea would be then to just let this case  
8 hang, but what about if he gets adequate financing, the  
9 owner? Is this Mr. Morgan of Morgan Media?

10 MS. SADOWSKY: Morgan Media, yes.

11 JUDGE SIPPEL: If Morgan Media gets the financing,  
12 they could turn the station right back on tomorrow, could  
13 they not, I mean, if they had the money to operate the  
14 station?

15 MS. SADOWSKY: Your Honor, I do not really know  
16 how quickly the station can go back on the air. I do not  
17 know the state of the facilities. It is an AM station. I  
18 do not know whether because of its silence any technical  
19 modifications need to be made.

20 I really do not know how much tinkering, so to  
21 speak, would need to be done for the technical facilities to  
22 get back up and running again.

23 You are correct, though. If manna from heaven  
24 came down to Mr. Morgan, he could get the station back up on  
25 the air. That is why a prospective buyer is being sought

1 and has been sought for some time. This is in Auburn, New  
2 York, which I believe is not that far from Ithaca, but it is  
3 in an area where the wintertime is probably harsh.

4 Quite frankly, I do not know whether we will be  
5 able to get back on the air by the statutory deadline.  
6 Morgan Media understands what it is up against.

7 JUDGE SIPPEL: In that case, I do not want to put  
8 you or the applicant onto any unnecessary work, but I would  
9 like to see something in the nature of a representation as  
10 to the status of the station.

11 What I am getting at is if the station cannot be  
12 put on the air by February 9, whether you get a buyer or  
13 not, then what are we doing with this case?

14 MS. SADOWSKY: That is right.

15 JUDGE SIPPEL: It is dead. I may have an  
16 obligation to make a summary disposition on my own of this  
17 case. I would certainly be reluctant to do that,  
18 particularly in light of what the Commission has recently  
19 written about how these cases are to be handled.

20 I guess we are all familiar with the recent  
21 decision that came down the other day --

22 MS. SADOWSKY: Right.

23 JUDGE SIPPEL: -- in Brownfield, Texas.

24 MS. SADOWSKY: Right.

25 JUDGE SIPPEL: This brings me back to where we



1     were really, but I would like to know even by virtue of a  
2     letter perhaps from yourself what the best estimate can be  
3     made at this time as to the prospect for bringing the  
4     station back on line by February 9, assuming that there is a  
5     ready, willing and able buyer --

6             MS. SADOWSKY: I see.

7             JUDGE SIPPEL: -- by a date certain. Obviously if  
8     you get the buyer by February 8 -- well, you could. Now,  
9     here is an interesting little twist here.

10            The Commission, in its decision, invited the  
11     applicant, or the licensee rather, in that case to come in  
12     for additional relief to the Commission if they cannot get  
13     it back in operation by February 9.

14            Now, that may be ample authority. It would be out  
15     of my hands anyway, but if it is a last minute buyer, you  
16     may get up there and maybe the Commission can find you a way  
17     to give you some additional relief. I would not want to  
18     undercut that effort.

19            Does the Bureau have any particular position on  
20     this at this time?

21            MR. ZAUNER: Yes. I have read the Brownfield  
22     case, and I have read the Commission's language. I wonder  
23     whether the Commission can actually do something. If they  
24     are not on the air by February 9, 1997, the statute seems  
25     pretty clear that that is --

1 JUDGE SIPPEL: Well, I do not need to get into  
2 that. The point is that the Commission is willing to hear  
3 the petition.

4 I can certainly dismiss the case on the basis of  
5 or dismiss the application on the basis of the statute and  
6 the impossibility to meet the deadline, and then you could  
7 go right up to the Commission.

8 What I would propose to do is I give you ten days  
9 to come back to me with a status report, and this can be by  
10 way of letter. Again, I do not want you to put you or your  
11 client to a lot of burden and expense, but just what you  
12 said about your uncertainty about the technical condition of  
13 the station.

14 If you could just in a general way explain to me  
15 what your client represents to be that technical condition  
16 or physical condition and what the prospects would be to  
17 bring it back on the air before February 9, assuming that  
18 there is a ready, willing and able buyer.

19 MR. ZAUNER: What can we do with that information  
20 once we get it? We cannot move to not renew. I guess this  
21 is revoke. We cannot take action to revoke the license  
22 based upon a statement that we are not sure whether we will  
23 be able to get the station on the air by the statutory  
24 deadline because the equipment is not in good shape.

25 What I would like to know is if there comes a

1 point in time in which the licensee determines it cannot in  
2 any way get the station back on the air that they so inform  
3 us expeditiously so we can take action in this proceeding to  
4 terminate it and do whatever is necessary.

5 JUDGE SIPPEL: Well, that would certainly be  
6 appropriate, but I want to know what the status of the  
7 situation is. I think I am entitled to know that. I do not  
8 intend to take any action on it, but it certainly may prompt  
9 me to want another conference.

10 The case is in hearing, and these cases are  
11 supposed to be decided when they are ready to be decided. I  
12 do not anticipate that, but I would like to know what the  
13 condition of the station is. I think it is a reasonable  
14 request on my part.

15 You are absolutely right. If it comes to the  
16 point that he realizes that there is absolutely no  
17 conceivable way that this thing can come back on the air, I  
18 was going to say that he should bring that to our attention  
19 and perhaps tender his license, but in light of what the  
20 Commission has said, I am not so sure about that.

21 I mean, the Commission has said it is apparently  
22 willing to look at situations where licensees cannot meet  
23 that February 9 deadline, assuming, of course, what is  
24 implied there very strongly is there be an ability to make a  
25 strong showing that there has not been any impediments to

1 meeting that date caused by the licensee. In other words,  
2 events beyond the licensee's control has prevented the  
3 licensee from meeting the February 9 deadline.

4 I am not going to in a situation like this make a  
5 ruling that the Commission was reading the statute wrong.

6 MR. ZAUNER: I think maybe, and I cannot say I am  
7 100 percent sure of this, but in the Brownfield case I think  
8 what the Commission may have been concerned with was as a  
9 result of the Bureau's action designating the case for  
10 hearing, the licensee has been delayed in its ability to --

11 JUDGE SIPPEL: True.

12 MR. ZAUNER: -- put the station back on the air.

13 JUDGE SIPPEL: True.

14 MR. ZAUNER: If this is a consequence of that,  
15 then the Commission will try to consider what can be done if  
16 they cannot return the station to operation before February  
17 9.

18 JUDGE SIPPEL: True. That is true.

19 MR. ZAUNER: Those same exigencies exist in this  
20 case. I think that we may have a different situation here.

21 JUDGE SIPPEL: Well, we do, but the Commission did  
22 not qualify its holding to that effect.

23 Your interpretation makes a lot of sense. That  
24 might be the way that it would dispose of a petition in this  
25 case for emergency relief or something is to distinguish it

1 and say that you do not have the same situation here because  
2 the Bureau has adhered to its policy in this case.

3 There is nothing, of course, for the Bureau to  
4 adhere to its policy because you do not need anything  
5 reviewed on an expedited basis by the Bureau. Well, you  
6 will. I guess once you get your buyer you would certainly.  
7 You would have to have the transaction and the transfer  
8 approved on an expedited basis, but there is no reluctance  
9 on the Bureau to do that, is there Mr. Zauner?

10 MR. ZAUNER: I am not sure yet, Your Honor. This  
11 Brownfield case is new and, as far as I know, no real policy  
12 determinations have been made yet by the Bureau.

13 As you know, the Brownfield case dealt with a  
14 modification application, not a transfer application,  
15 although it would seem that the logic would apply from one  
16 to another.

17 Also, I am not sure whether in Brownfield the  
18 station was off the air without authority as appears to be  
19 the case with the licensee in this case and whether that  
20 would have any impact on what we do or do not do. We just  
21 have not completed our analysis of the Brownfield factors  
22 yet and made policy determinations that I have been informed  
23 of.

24 I am a little reluctant to state exactly what the  
25 Bureau would do until I have a little bit better idea of

1     what it is going to do in light of the Brownfield case,  
2     which, as you know, was only released on November 15, a  
3     couple of days ago.

4             MS. SADOWSKY: Your Honor?

5             JUDGE SIPPEL: Go ahead.

6             MS. SADOWSKY: In that regard, I think that a  
7     licensee is entitled in this situation to get some clear  
8     idea whether, for instance, it can enter into an asset  
9     purchase agreement with a prospective buyer with the idea  
10    that that application would be considered by the Commission  
11    while the revocation proceeding is ongoing.

12            I mean, one of the concerns that I had is that  
13    this proceeding would be an impediment to any prospective  
14    buyer coming in now hoping to take over the station in short  
15    order or at all.

16            My strategy has been that we would propose that a  
17    prospective buyer can enter into a local marketing agreement  
18    or time brokerage agreement with the licensee pending the  
19    outcome of this proceeding if the Commission will not  
20    entertain an asset purchase agreement or 314 application.

21            However, I think if the Commission would entertain  
22    an application while this proceeding is ongoing, I think  
23    that would benefit our situation tremendously because it  
24    will give some more incentive to a buyer to step up to the  
25    plate.

1 JUDGE SIPPEL: What does the Bureau need to  
2 respond to that? Do you need a statement?

3 MR. ZAUNER: No. I do not think we need anything.  
4 I think I am going to go back to my office and try to find  
5 out some more answers.

6 JUDGE SIPPEL: Well, the answer has to be  
7 obviously in the context of this case.

8 MR. ZAUNER: I would like to get some general  
9 answers because we have other cases where there were  
10 transfer applications, and I would like to know whether we  
11 are going to be processing them on an expedited basis so  
12 that these stations can have the new purchasers come in and  
13 put the stations back on the air or not.

14 JUDGE SIPPEL: I know, but that is not what I am  
15 here for today.

16 What I am trying to do is do for Morgan what I  
17 need to get done for Morgan. Should there be a letter to  
18 the Bureau or some kind of statement from you, from Mr.  
19 Morgan, explaining exactly what your situation is and asking  
20 in effect for an opinion as to whether under these  
21 circumstances you will get expedited treatment on a transfer  
22 because obviously you would want to take that reading from  
23 the Bureau in the context of getting a buyer.

24 MS. SADOWSKY: That is correct.

25 JUDGE SIPPEL: You are entitled to know certainly

1 what the Bureau's views are now with respect to expediting  
2 this kind of relief.

3 MR. ZAUNER: No problem.

4 JUDGE SIPPEL: Okay. Now, you can talk about this  
5 with Mr. Zauner --

6 MS. SADOWSKY: Sure.

7 JUDGE SIPPEL: -- when we close this, but let me  
8 suggest this. A letter from you as counsel for Morgan to  
9 the Bureau director setting out the factual scenario of this  
10 case and then asking in light of the Brownfield decision for  
11 a prompt statement of the Bureau's position with respect to  
12 expediting a transfer, with the Bureau recognizing that this  
13 advice is necessary in order to continue meaningful  
14 negotiations with potential transferees.

15 Otherwise people are going to say you are wasting  
16 my time and why should I talk to you, --

17 MS. SADOWSKY: Absolutely.

18 JUDGE SIPPEL: -- let alone my money.

19 All right. Why do we not do it on that basis  
20 then? Five business days to get that letter to the Bureau?

21 MS. SADOWSKY: Certainly.

22 MR. ZAUNER: I think it would behoove you to get  
23 it in as soon as possible in your own interests. If you  
24 could get it today, that would --

25 MS. SADOWSKY: I believe I can get it in today.



1 JUDGE SIPPEL: Okay. All right. I am going to  
2 set it down. I have to get an Order out.

3 Let's say then in three business days you get to  
4 bring it in. Now, that means obviously any time before  
5 three business days. I will give the Bureau five business  
6 days.

7 MR. ZAUNER: I am not going to respond to that. I  
8 do not even think it should be addressed to me. I think  
9 this is something --

10 JUDGE SIPPEL: No, no. I am not talking about  
11 you. I am talking about the Bureau.

12 MR. ZAUNER: The Bureau? Well, I am the Bureau.  
13 I represent the Bureau.

14 JUDGE SIPPEL: I understand that. I am not asking  
15 you personally. I am just saying that I will Order the  
16 Bureau to respond within five business days. Whether or not  
17 the Bureau --

18 MR. ZAUNER: I do not know whether you have the  
19 authority, Your Honor, to Order the Bureau to respond to a  
20 letter in five business days, and I would object to that.

21 JUDGE SIPPEL: Well, that is true. I cannot tell  
22 the Bureau how many days they have to take to respond to a  
23 letter request, but what I do want from you then is in ten  
24 days I want a status report from the Bureau. That is not  
25 ten business days. That is just plain, straight days.

1 I will set three business days for the letter. Of  
2 course, as you have indicated, Mr. Zauner, it is in Ms.  
3 Sadowsky's interest to get it out today, which she has  
4 indicated she will do.

5 Ten days on the status report, and we will just  
6 take it from there.

7 MR. ZAUNER: Can that status report be in the form  
8 of a letter, Your Honor, to Your Honor?

9 JUDGE SIPPEL: No. I would rather have it in the  
10 form of a status report. It does not have to be anything  
11 long or lengthy.

12 MR. ZAUNER: In the form of a pleading?

13 JUDGE SIPPEL: In the form of a pleading. You can  
14 negotiate that with me when it comes times for you to file.  
15 As long as Ms. Sadowsky is in on it, I will listen to any  
16 kind of an informal -- if you want to adjust that or for  
17 whatever reason, but for purposes of setting the  
18 requirements.

19 Do you understand what I am saying, Ms. Sadowsky?  
20 In other words, if Mr. Zauner is to the ninth day on this  
21 and things are happening and he thinks that it would help  
22 the case better to defer it or to let me know orally or to  
23 let me know by letter --

24 MS. SADOWSKY: I understand.

25 JUDGE SIPPEL: -- I can adjust this as long as you

1 are in on the loop.

2 MS. SADOWSKY: That is fine.

3 JUDGE SIPPEL: In other words, what I am trying to  
4 accomplish is flexibility on both sides to do whatever it  
5 takes to get this thing done, but if everything falls apart,  
6 I want to know about it in ten days.

7 That is it. Otherwise we will leave all the  
8 hearing dates and the procedural dates just the way they  
9 are.

10 MS. SADOWSKY: And you still want me to file  
11 within ten days a letter indicating the technical ability of  
12 the station to go --

13 JUDGE SIPPEL: You do not have to do that now.

14 MS. SADOWSKY: No?

15 JUDGE SIPPEL: No.

16 MS. SADOWSKY: Okay.

17 JUDGE SIPPEL: I am sorry. I should have said  
18 that. We have now shifted into another approach.

19 MS. SADOWSKY: Okay.

20 JUDGE SIPPEL: You just serve me with copies of  
21 what you are giving to the Bureau --

22 MS. SADOWSKY: Okay.

23 JUDGE SIPPEL: -- and that will let me know  
24 everything I need to know.

25 MS. SADOWSKY: Okay.

1 JUDGE SIPPEL: Now, there are procedural  
2 deadlines. I guess they are really going to be mooted out  
3 by this, so I will just leave the hearing order or the  
4 procedural order just the way they are.

5 Is that all right? I mean, nobody sees any  
6 problem with that? They are all going to be moot anyway.

7 MS. SADOWSKY: Right. If on February 10, which is  
8 the date for exchange of exhibits --

9 JUDGE SIPPEL: Exactly. Those will be moot, but I  
10 will indicate something to that effect in the Order so that  
11 it is clear from the record that we all understand what is  
12 going on here --

13 MS. SADOWSKY: Yes.

14 JUDGE SIPPEL: -- and not thinking that we are  
15 going to have a mystery ship or something come in to hear a  
16 case after February 9.

17 That is all I can think of. Whatever you are  
18 sending to the Bureau, you can mail me copies, but if you  
19 would -- do you have my fax number; you can get it from my  
20 secretary -- just fax me a copy as you are getting it over  
21 to Mr. Zauner?

22 MS. SADOWSKY: Okay.

23 JUDGE SIPPEL: You can deal that way, too, among  
24 each other with faxes on these quick turnaround dates and  
25 just drop it in the mail. The date on the document will be

1 the mailing date. That will comply with these time periods.

2 Thank you very much. I think this is an  
3 intelligent way to approach this thing. I hope it works.

4 We are in recess.

5 (Whereupon, at 9:55 a.m. the hearing was  
6 concluded.)

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**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: MM-96-209


CASE TITLE: Morgan Media, Inc.

HEARING DATE: November 20, 1996

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

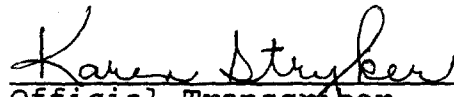
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Date: 11-20-96

  
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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

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